

1 AMY R. LEVINE, State Bar No. 160743  
alevine@dwkesq.com  
2 SARAH L. W. SUTHERLAND, State Bar No. 239889  
ssutherland@dwkesq.com  
3 MATTHEW J. TAMEL, State Bar No. 229378  
mtamel@dwkesq.com  
4 DANNIS WOLIVER KELLEY  
275 Battery Street, Suite 1150  
5 San Francisco, CA 94111  
Telephone: 415.543.4111  
6 Facsimile: 415.543.4384

7 Attorneys for Defendant  
8 SAN DIEGO UNIFIED SCHOOL DISTRICT

9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11  
12 T.B., Allison Brenneise and Robert  
13 Brenneise,

14 Plaintiffs,

15 v.

16 San Diego Unified School District,  
17 Defendant.

Case No. 08-CV-0028 MMA (WMc)

**DISTRICT'S SEPARATE  
STATEMENT OF UNDISPUTED  
FACTS IN SUPPORT OF ITS  
MOTION FOR SUMMARY  
JUDGMENT (FIFTH CLAIM FOR  
RELIEF)**

18 Date : October 24, 2016  
19 Time : 2:30 p.m.  
20 Dept : Courtroom 5  
21 Judge : Honorable Michael M. Anello

22 Complaint Filed: January 4, 2008  
23 Trial: February 14, 2017  
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275 BATTERY STREET, SUITE 1150  
SAN FRANCISCO, CA 94111

**UNDISPUTED FACTS REGARDING PLAINTIFFS' FIFTH CLAIM  
FOR RELIEF**

**ALLISON & ROBERT BRIENNEISE'S STANDING/FAILURE TO STATE A CLAIM**

1. T.B. is a qualified individual with a disability within the meaning of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.	Second Amended Complaint ("SAC"), ¶¶ 6; 8.
2. Plaintiffs Allison Brenneise and Robert Brenneise do not allege that they are individuals with disabilities.	Second Amended Complaint ("SAC"), ¶ 7.
3. Plaintiffs Allison Brenneise and Robert Brenneise do not allege that they are otherwise qualified for the programs and services of the San Diego Unified School District ("District").	Second Amended Complaint ("SAC"), ¶ 7.____
4. Plaintiffs Allison Brenneise and Robert Brenneise do not allege that they have been directly discriminated against or deprived of the programs, activities and services of the District.	Second Amended Complaint ("SAC"), ¶¶ 7; 50.____

**ALL PLAINTIFFS' FAILURE TO STATE A CLAIM/FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES**

**T.B. Educated At Home Pursuant To Stav Put IEP**

5. T.B. had been educated in his home since his mother, Allison Brenneise, unilaterally removed him from a school placement at the Del Sol Academy within the San Diego Unified School District in October 2003, except for a brief time when he attended Coronado Academy. T.B. received related services (sometimes called Designated Instruction and Services ("DIS")) through various nonpublic agency ("NPA") providers selected by his parents	Office of Administrative Hearings ("OAH") Administrative Record ("AR") 2239-2346, AR 3034-78.  OAH Transcript ("TR") 43:1-11, TR 44:1-15, TR 46:5-13, TR 70:20-TR71:17, TR 159:12-25, TR 160:3-25, TR 166:15-25, TR 431:7-432:25, TR 804:22-805:8.
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1	since his removal to the home.	
2	6. The July 17, 2006 Individual	AR 1966 (FF ¶ 242), AR 1967 (FF ¶
3	Education Program (“IEP”) outlines the	245), AR 3351-92 (IEP).
4	stay put agreement between the parties	TR 176:5-25, TR 454:16-455:12, TR
5	designed by Mrs. Brenneise. It provides	2261:4-16.
6	that if there was no agreement as to T.B.’s	
7	2006-2007 IEP, that T.B.’s home program	
8	would continue until the parent consented	
9	to implementation of an IEP and that,	
10	should there be no agreement, the District	
11	would provide all the services set forth in	
12	the stay put provisions of that IEP (the	
13	“Stay Put IEP”). After the Coronado	
14	placement ended in late July 2006 AND	
15	UNTIL THE October 2007 Office of	
16	Administrative Hearings Decision, the	
17	“Stay Put IEP” governed T.B.’s program.	
18	7. The “Stay Put IEP” called for the	AR 3351, 3387-92.
19	following services: Applied Behavior	TR 645:19-646:11.
20	Analysis (“ABA”) one-to-one aides to be	
21	provided by ACES for 41.5 hours per	
22	week; behavioral training by ACES; ABA	
23	supervision by ACES; an ABA clinic	
24	attended by the behavior aides;	
25	occupational therapy (“OT”) provided by	
26	School Options (through Chris	
27	Vinceneaux) for 4 hours per week; speech	
28	and language therapy provided by Laurie	
	Silverman & Associates for 4 hours per	
	week; and assistive technology (“AT”) for	
	1 hour per month.	
	<b>August 30, 2006 IEP</b>	
	8. Recognizing that health was an area	AR 3914-17, AR 3927-4025, AR
	of need for T.B., the August 30, 2006 IEP	4068-69.
	offered a transition plan which required all	TR 626:10-628:4, TR 758:13-759:10,
	school staff be trained in T.B.’s health	TR 1130:3-1135:5.
	needs by a District nurse prior to his	
	starting school, including on his medical	

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1	condition (PKU), his dietary needs (e.g.,	
2	how much PHE he could ingest per day and	
3	tracking thereof), his seizures and	
4	osteoporosis, and his g-tube feedings.	
5	9. The August 30 IEP also offered an	AR 2327, AR 3927-29, AR 3970, AR
6	additional eight hours of health nursing	3972, AR 4020.
7	services, a full-time one-to-one aide from	
8	Resources for Students with Autism, a	
9	school health management plan once T.B.	
10	started school, and a panoply of other	
11	services and supports for T.B. and school	
12	personnel.	
13	10. The Service Delivery Details page of	AR 3929.
14	the August 30 IEP clarified that the eight	
15	hours of health nursing services included	
16	three hours of consultation and training	
17	provided by a school nurse between August	
18	30 and September 30, and five hours of	
19	nursing consultation per year thereafter as	
20	needed (about half an hour per month).	
21	11. District witnesses testified that the	TR 3317:21-3319:25, TR 3408:15-
22	nurse would designate, train, and supervise	3410:24.
23	an employee to assist T.B. with g-tube	
24	feeding and that the eight hours of nursing	
25	services was for that purpose.	
26	<b>December 4, 2006 IEP</b>	
27	12. The December 4, 2006 IEP was over	AR 5202-314.
28	100 pages long and offered placement at	
	Wangenheim Middle School in a special	
	day class for 3 periods per day and in	
	collaborative or co-taught general	
	education classes for 2 periods a day. T.B.	
	would attend school for a full day after a	
	transition period specified in the transition	
	plan. The offer also included, inter alia,	
	nursing services, occupational therapy	

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1	services, speech/language services,	
2	assistive technology, adapted physical	
3	education, vision therapy and physical	
4	therapy. A full-time one-to-one aide was	
5	also offered. The aide would be with T.B.	
6	all day, including during lunch and while g-	
7	tube feeding.	
8	13. The IEP was an annual IEP designed	AR 5202-314.
9	for one year, which expired on December 3,	
10	2007.	
11	14. Wangenheim had a health office and	AR 4178-98, AR 5201-314.
12	a full time school nurse on site.	
13		TR 758:8-24, TR 1466:10-1468:1, TR
14		1789:13-1791:18.
15	15. The December 4 IEP offered a goal	AR 5232, AR 5244, AR 5245.
16	to assist T.B. in learning to independently	
17	ingest his formula through his g-tube more	
18	quickly, which listed the nurse as one of the	
19	people responsible, and goals to assist him	
20	in calculating his PHE intake and making	
21	appropriate food choices.	
22	16. The December 4 IEP also included a	AR 5308-15.
23	transition plan that provided additional staff	
24	training and detailed how the specifics of	
25	T.B.'s g-tube feedings at school would be	
26	finalized by the nurse in consultation with	
27	his parent.	
28	17. The transition plan attached to the	AR 5308.
	December 4 IEP specified on the first page	
	in the second bullet that prior to starting	
	school: "G-tube feeding will be scheduled	
	to occur daily in the Nurse's room. Timing	
	will be determined in collaboration with the	
	school nurse and parent, in order to fit g-	
	tube feeding into [T.B.]'s schedule at an	
	appropriate time, and to clarify which staff	

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1	member will assist until [T.B.] becomes independent.”	
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3	18. The first bullet in the transition plan regarding what would occur before T.B. started school provided for “health/safety” training for staff expected to work directly with T.B. before he started school regarding PKU and its effects on the school-aged child, g-tube feeding, nutrition and low protein foods, PKU curriculum materials, osteoporosis and proper body mechanics.	AR 5308.
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10	19. The December 4 IEP continued the District’s offer of 8 hours of nursing service for the year.	AR 5201-5314. TR 3313:4-21.
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13	20. The eight hours of offered nursing time was to be used to provide any necessary further training and supervision to the aide who would be assisting T.B. with taking his prescription formula through his g-tube at school after the training in the transition plan was complete.	AR 3927-4025, AR 5202-314. TR 3312:15-3314:17, TR 3408:13-3410:24, TR 5266:16-5268:11.
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17		
18	21. Sara Bonnet was the school nurse assigned to Wangenheim. As a school nurse, she was assigned to Wangenheim on a full time basis. There was no limit on the amount of time she could spend assisting any Wangenheim student, including T.B.	Declaration of Amy R. Levine in Support of Motion for Summary Judgment (“Levine Decl.”), ¶ 17, Ex. Z (Jennifer Gorman Declaration in Support of District’s Nov. 28, 2011 Motion for Summary Judgment (“Gorman Decl.”), ¶ 7.  Levine Decl., ¶ 17, Ex. W (Declaration of Sara Bonnet in Support of District’s Nov. 28, 2011 Motion for Summary Judgment (“Bonnet Decl.”), ¶ 2.
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24	<b>OAH Decision</b>	
25	22. The District filed for due process on November 29, 2006 to establish that its assessment was appropriate. On December 15, 2006, the District amended its due	AR 5-10 (November 29, 2006 Due Process Complaint), AR 15-19 (Amended Complaint), AR 116-36 (January 29, 2007 Due Process Complaint), AR 1913-89 (Decision).
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1 2 3 4 5 6 7	process request to defend both its assessment and the IEP offered on December 4, 2006. The Plaintiffs filed for due process on January 29, 2007, challenging the assessments, the December 2006 IEP, and the August 2006 IEP. The cases were consolidated for hearing. The District prevailed on 15 of the 18 issues identified by the ALJ.	
8 9 10 11	23. The 75-page OAH Decision was served on the parties by mail on October 5, 2007. The District received the Decision on Monday, October 8, 2007.	AR 1913-89.  Levine Decl., ¶ 17, Ex. DD (Declaration of MarySue Glynn in Support of District's Nov. 28, 2011 Motion for Summary Judgment ("Glynn Decl."), ¶ 12.)
12 13 14 15	24. The Administrative Law Judge ("ALJ") found that the December 4, 2006 IEP provided T.B. with a free appropriate public education ("FAPE") in most respects, and her order allowed the District to implement it as modified by her order.	AR 1986-87 (Order ¶¶ 1-6).
16 17 18 19 20 21 22 23	25. At the time the District offered the August 30 and December 4 IEPs, all of the information it had available to it established that T.B. could g-tube feed independently with adult prompting to stay on task, and that he did not need a nurse present to personally assist him with his g-tube feedings on a daily basis.	AR 2525, AR2529, AR 2894, AR 3034-78, AR 3269-70, AR 3791-888, AR 3897-901, AR 4031-34, AR 4178-98, AR 4303-402, AR 4404-503, AR 4677-782, AR 4859-906, AR4907-10, AR4912-13, AR5055-92.  TR 4526:7-22.  See also, Plaintiffs' Response to SDUSD's Separate Statement of Material Facts, Doc. 98-1, 25:14 (indicating that this fact was "uncontested").
24 25 26 27	26. The ALJ found "[a]lthough the evidence was undisputed that Student needs adult supervision for his G-Tube feedings, there was no evidence that the supervision must be provided by a registered nurse" and that T.B. was "capable of mixing his own	AR 1943-44 (Factual Findings ("FF") ¶ 138), AR 1960-61 (FF ¶ 216).

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1	formula if he has adult supervision and	
2	prompting.”	
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4	27. While the ALJ did not determine that	AR 1985 (Legal Conclusions (“LC”) ¶
5	having a nurse directly supervise g-tube	62), AR 1986 (Order, ¶ 1).
6	feedings for T.B. was required for FAPE,	AR 1963 (FF ¶ 230), AR 1981 (LC ¶
7	she did order that a nurse directly supervise	48)
8	g-tube feedings as a remedy after she found	
9	that the December 4, 2006 IEP was unclear	
10	as to who was going to supervise the	
11	feedings and whether that person would be	
12	qualified to do so.	
13	28. As a remedy for the denial of FAPE,	AR 1986 (Order ¶ 1).
14	the ALJ ordered that the December 4, 2006	
15	IEP be modified to provide that g-tube	
16	feedings be scheduled to occur daily in the	
17	nurse’s office, and that a school nurse be	
18	present and personally assist the student	
19	with the g-tube feedings.	
20	29. The ALJ specifically left it up to the	AR 1985 (LC ¶¶61-62) (“nothing in
21	District in future IEPs to designate and train	this Decision is intended to prevent
22	a Behavior Support Assistant (“BSA”) or	District from proposing, in a future
23	other type of non-nursing staff to provide g-	IEP, that another classification of
24	tube services.	employee assist with Student with the
25		feedings, provided that the assistant
26		meets the requirements of Education
27		Code section 49423.5”), AR 1981 (LC
28		¶¶ 46-47).
	<b>Implementation of OAH Decision</b>	
	30. After receiving the OAH Decision,	Levine Decl., ¶ 17, Ex. DD (Glynn
	Ms. Glynn modified the IEP so that it read:	Decl., ¶ 15, Exs. D-G (October 17,
	“G-tube feeding will be scheduled to occur	2007 email from M. Glynn to A.
	daily in the nurse’s office. A school nurse	Brenneise attaching modified
	will be present and will personally assist	transition plan [SDUSD 1084-93]).
	the student with the student’s G-tube	
	feeding. The G-Tube feeding will occur at	
	the time(s) and in the manner designated in	
	a doctor’s order from Student’s current	



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physician. Student's mother will be responsible for providing the school nurse with a current doctor's order specifying the time(s) of the G-Tube feeding and the amount of formula to be used in the feeding(s), and for providing updated doctor's orders whenever there is any change in the G-Tube feedings." On October 17, 2007, Ms. Glynn sent this IEP addendum with a cover letter to Mrs. Brenneise.

31. The transition plan included as part of the December 4, 2006 IEP was designed to effectuate a smooth transition from T.B.'s home-based program to a school-based program.

AR 5308-13.

TR 618:15-612:9, TR 1506:14-1512:6, TR 1727:24-1733:21, TR 1787:3-1788:25, TR 2152:6-2154:16, TR 2165:22-2166:15.

32. The transition plan included four phases. During Phase I, T.B. would attend school for only two hours per day and his home-based DIS program would be reduced commensurately. T.B.'s time in school would increase during each phase, until Phase IV, when he would attend school for the full day.

AR 5308-13.

TR 1507:23-1512:12.

33. The ALJ modified the IEP to clarify that until T.B. entered Phase IV of the transition plan where he would attend a full day of school, he would continue with his then-current DIS providers. Once he entered Phase IV, his DIS services would be provided by District staff.

AR 1986 (Order ¶ 3).

34. As modified by the ALJ, the transition plan provided for parent approval before T.B. moved between any of the four phases of the transition.

AR01986 (Order ¶ 2).

35. Under the modified transition plan, before Phase I even began, a number of

AR 1986 (Order ¶ 1), AR 5308-13.

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preparatory activities needed to take place. The District needed to obtain a request from T.B.'s parent to administer medication at school and current doctor's orders from the parents in order to ascertain the current prescription for T.B.'s g-tube feedings and work those feedings into his schedule. All staff who would be working with T.B. at Wangenheim would need to be trained in T.B.'s health needs. In addition, other District staff were to receive additional training on T.B.'s health and behavioral needs. His two one-to-one behavioral aides were to observe his home program for 20 hours, and key members of the IEP team (including at least the District psychologist, occupational therapist, and autism specialist) were also to observe the home program for a minimum of 2 hours each. The District occupational therapist was to observe a minimum of two of T.B.'s OT sessions with School Options, and School Options and the District occupational therapist were to jointly visit the school and make recommendations regarding OT equipment. This equipment, along with T.B.'s assistive technology and FM equipment, was to be set up before the first day of school. T.B. and his parents and his ACES aide were to visit the school at least once prior to his starting, and an additional visit would be scheduled at parent or staff request. His case manager was also to visit the school, contact the parents to gain parent insights, answer questions and provide a class schedule to assist the parents in preparing T.B. for the transition. ACES was also to review the schedule and expectations with T.B. to reduce his anxiety. Finally, the District was to

TR 3564:4-12.

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1 2 3 4 5 6 7 8	“collaborate with ACES, Chris Vinceneux and Laurie Silverman and Associates for up to 2 hours each per week prior to T.B.’s starting school, to ensure smooth transition of therapy and instruction ....” A collaboration meeting was also to take place prior to [T.B.]’s starting school “to discuss readiness to move to the next phase, implementation.” This meeting was to include a number of District staff members and T.B.’s stay put DIS providers.	
9 10 11 12 13	36. In anticipation of a favorable decision and T.B.’s return to school, prior to October 8, 2007, the District began some of the staff training called for in the transition plan and also put a number of other pieces in place to make the team ready for T.B. to enroll in school.	TR 1793:4-19.  Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 55, Ex. KK (transition activities chart [SDUSD 2169-71])).
14 15 16 17 18 19 20	37. On October 2, 2007, the psychologist and autism specialist completed behavioral training for school staff regarding T.B.’s behavior support plan and specific staff interaction strategies.	Levine Decl., ¶ 17, Ex. FF (Declaration of Sheila Doctors in Support of District’s Nov. 28, 2011 Motion for Summary Judgment (“Doctors Decl.”) ¶ 10, Ex. G (October 2, 2007 training attendance sheet [SDUSD 701])).  Levine Decl., ¶ 17, Ex. AA (Declaration of Matthew Howarth in Support of in Support of District’s Nov. 28, 2011 Motion for Summary Judgment (“Howarth Decl.”), ¶ 9).
21 22 23 24 25	38. On October 2 and October 31, 2007, Ms. Doctors completed two two-hour school visits and observed the school environment including the classroom, the cafeteria, the restrooms, and the health room.	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 55, Ex. KK (transition activities chart [SDUSD 2169-71])).
26 27	39. On October 10, 2007, the District’s occupational therapist met for two hours with the Wangenheim School-based	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 55, Ex. KK (transition activities chart [SDUSD 2169-71])).

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1 2 3 4 5 6	occupational therapist to discuss T.B.'s assessment and IEP goals. The District's occupational therapist visited the school site, conferred with the OT assistant, SBDRT, Learning Center staff, vice principal, and speech therapist. She observed the therapy space and delivered OT equipment to the school.	Levine Decl., ¶ 17, Ex. X (Declaration of Phyllis Gahan in Support of in Support of District's Nov. 28, 2011 Motion for Summary Judgment ("Gahan Decl."), ¶ 5).
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	40. On October 17, 2007, the District's Special Education Support Instruction Director MarySue Glynn notified Mrs. Brenneise that the District wanted to start the observations required by the modified IEP no later than October 22, 2007, and that Applied Interventions & Methodologies, Inc. ("AIM"), the new behavioral services provider, was awaiting a schedule from Mrs. Brenneise, but expected to provide services that week. Ms. Glynn also notified Mrs. Brenneise that the District was collaborating with T.B.'s current DIS providers and had undertaken to complete the health and safety trainings called for in the transition plan. Ms. Glynn asked Mrs. Brenneise to provide dates when she or her husband could visit Wangenheim with T.B. and the AIM aide. Ms. Glynn also explained that the District was working with T.B.'s current providers to ensure he received DIS services while transitioning into a school program and asked Mrs. Brenneise to contact her regarding appointment times for these providers. Finally, Ms. Glynn indicated that the District planned to provide OT services to T.B. through a District occupational therapist at Wangenheim beginning October 22, 2007.	Levine Decl., ¶ 17, Ex. DD (Glynn Decl., ¶ 15, Ex. E (October 17, 2007 letter from M. Glynn to A. Brenneise [SDUSD 1091-92])).
28	41. On October 29, 2007, Ms. Glynn	Levine Decl., ¶ 17, Ex. DD (Glynn

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1 wrote to Ms. Brenneise to “detail[] the 2 plans to initiate the implementation of 3 [T.B.]’s IEP.” First, Ms. Glynn stated that 4 the District’s observations were scheduled 5 to begin on October 31, 2007. Also the 6 District had arranged for the OT to start on 7 the same day. Second, Ms. Glynn 8 suggested that Mrs. Brenneise, T.B. and the 9 AIM tutor visit Wangenheim on November 10 7. Third, Ms. Glynn explained that the first 11 collaborative meeting was scheduled for 12 November 6, at Wangenheim. Ms. Glynn 13 stated that since the District “anticipates 14 that trainings, observations, and 15 collaborative meetings, as well as all 16 necessary visits to Wangenheim, will be 17 completed by November 9th ... 18 transportation is scheduled to begin on 19 Nov. 13 to take [T.B.] to school ....” 20 Finally, Ms. Glynn indicated that Mrs. 21 Brenneise needed to complete the following 22 tasks before T.B.’s first day of school: (1) 23 complete the school registration packet, (2) 24 meet with the nurse regarding the 25 Individual Health Services Plan, (3) meet 26 with the nurse to demonstrate the g-tube 27 feedings and bring all the necessary 28 equipment and supplies to school, (4) sign a “Parents SPHCS Form,” and (5) discuss the timing for the g-tube feeding.	Decl., ¶ 16, Ex. H (October 29, 2007 letter from M. Glynn to A. Brenneise [SDUSD 1100-01]).
42. On November 5, 2007, T.B., his mother, his NPA tutor and supervisor, and his case manager visited Wangenheim. They were shown the classroom, nurse room, occupational therapy area, restroom, cafeteria, and office.	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 55, Ex. KK (transition activities chart [SDUSD 2169-71])).
43. On or around November 5, 2007, T.B.’s case manager Sheila Doctors provided the parents with materials	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 20, Ex. R (collaboration meeting minutes [SDUSD 1128-29])); ¶ 55, Ex. KK (transition activities

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1 including enrollment forms, a map of the 2 school, a schedule of class topics currently 3 studied in the SDC, and the PKU and 4 Behavioral Support Plan (“BSP”) training 5 sign in sheets. Mrs. Brenneise was also 6 provided the 8th grade textbooks.	chart [SDUSD 2169-71]).
7 44. Ms. Doctors maintained ongoing 8 email contact with the parent and provided 9 additional information regarding transition 10 activities, and transportation information.	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 55, Ex. KK (transition activities chart [SDUSD 2169-71])).
11 45. The District did other things to help 12 T.B. transition, including, for instance, 13 giving his ABA aides work that his future 14 classmates at Wangenheim were working 15 on, so that he could participate in those 16 activities and be used to the work before he 17 started school. 18 It also provided additional health and 19 behavioral training to Mrs. Brenneise, at 20 her request.	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 53).  Levine Decl., ¶ 17, Ex. AA (Howarth Decl., ¶ 12).
21 46. On November 6, 2007, a 22 collaboration meeting was convened 23 involving the case manager, psychologist, 24 autism specialist, District occupational 25 therapist, the NPA DIS providers, and Mrs. 26 Brenneise. T.B.’s NPA speech and 27 language provider, Robin Lipton, was 28 invited to the meeting, but did not attend.	AR 4790-92.  TR 1755:19-1756:5.  Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶¶ 20-21, Exs. R and S (collaboration meeting agenda and minutes [SDUSD 1128-30, 1133-34])).  Levine Decl., ¶ 17, Ex. X (Gahan Decl., ¶ 13).  Levine Decl., ¶ 17, Ex. AA (Howarth Decl., ¶ 15).
47. On November 15, 2007, the District’s occupational therapist had a second meeting at Wangenheim. She met with the autism specialist and the SDC teacher to set up the room, review the list of correct OT practices, and provide	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 55, Ex. KK (transition activities chart [SDUSD 2169-71])).  Levine Decl., ¶ 17, Ex. X (Gahan Decl., ¶ 7, Ex. B (November 14, 2007



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1	equipment/material for T.B.	email from P. Gahan to A. Callies, M. Howarth and J. Oskam [SDUSD 1170]).
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3	48. On November 2, 2007, the AT specialist met with the SDC staff and provided training on AT programs. On or around November 6, 2007, a scanner was delivered to the school. By November 15, 2007 a new laptop with all the AT software was set up at school, and a District provided laptop was also made available to T.B. at home.	TR 3918:14-3919:8.  Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 55, Ex. KK (transition activities chart [SDUSD 2169-71])).
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10	49. On November 8, 2007, the parent returned T.B.'s FM device to the District. The device was checked and cleaned and the batteries replaced by the District's audiologist.	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 23, Ex. V (November 13, 2007 email from S. Doctors to A. Brenneise [SDUSD 1159]), Ex. W (November 15, 2007 email from S. Doctors to A. Brenneise [SDUSD 1183])).
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14	50. The District psychologist, occupational therapist and autism specialist completed at least two hours of observation of the home program on November 8 and November 16, 2007.	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 25, Ex. Y (November 9, 2007 email from S. Doctors to A. Brenneise [PC&D 1185])).  Levine Decl., ¶ 17, Ex. AA (Howarth Decl., ¶¶ 6, 18)).
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17		
18	51. On November 15, 2007, the new behavioral provider, AIM, implemented social stories curriculum from the classroom in the home in order to prepare T.B. for moving to his new program.	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 55, Ex. KK (transition activities chart [SDUSD 2169-71])).  Levine Decl., ¶ 17, Ex. AA (Howarth Decl., ¶ 12)).
19		
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22	52. The December 4, 2006 IEP provided for three hours of "health/safety" training for staff before T.B. started school regarding PKU and its effects on the school-aged child, g-tube feeding, nutrition and low protein foods, PKU curriculum materials, osteoporosis and proper body mechanics.	AR 5308-13.  TR 3918:1-8.
23		
24		
25		
26		
27	53. During the 2006 ESY and the 2006-	TR 4129:13-4130:9, TR 4151:17-22,
28		

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1 2 3 4 5	2007 school year, in anticipation of T.B.'s possible return to school, Nurse Tania Ware had also completed three trainings for staff on T.B.'s health and safety needs – at Coronado, Wangenheim, and Wiggen Schools.	TR 4183:22-4184:3.
6 7 8 9 10 11 12 13 14 15	54. A District nurse completed four staff trainings on T.B.'s health and safety needs on September 27, 2007, November 1, 2007, November 27, 2007, and December 3, 2007. A November 13, 2007 training for an additional tutor and the BSA was scheduled but then cancelled for medical reasons. The initial two trainings included 24 participants. The second two trainings were for all remaining school staff, including food services employees. Other members of the IEP team, e.g. Matthew Howarth and Sheila Doctors, had been trained earlier.	AR 5308-13.  TR 3613:8-12.  Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 9, Ex. C (September 27, 2007 training attendance sheet [SDUSD 693]), Ex. D (November 1, 2007 email from D. Connors to S. Doctors [SDUSD 1106])).  Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 26, Ex. Z (November 12, 2007 email from S. Doctors to A. Brenneise [SDUSD 1151]); ¶ 9, Ex. E (November 27, 2007 training attendance sheet [SDUSD 718-19]), and Ex. F (December 3, 2007 training attendance sheet [SDUSD 720-22])).
16 17 18 19 20 21 22 23 24 25 26 27 28	55. After the due process hearing, Mrs. Brenneise's attorney gave the District limited access to T.B.'s physicians. Nurse Linda Vergara worked with Dr. Taras and T.B.'s physician to gather the information needed for T.B. to start school, and to draft the Individual Health Support Plan ("ISHP"). Dr. Cederbaum, T.B.'s physician, provided the District with the information it needed on September 24, 2007, but Mrs. Brenneise never submitted the request to have specialized physical health care services provided, the physician's recommendation for medication, or the parent waiver/school responsibility form. Nurse Vergara gave these forms to Mrs. Brenneise several times between October 2006 and February 2008	Levine Decl., ¶ 17, Ex. BB (Declaration of Vergara in Support of District's Nov. 28, 2011 Motion for Summary Judgment ("Vergara Decl.") ¶¶ 12-13).  Levine Decl., ¶ 17, Ex. Y (Gorman Decl., ¶ 4, Ex. A (Nurse Vergara's forms checklist) [SDUSD 923-924])).

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1	and requested that she fill them out and	
2	return them, but she never did.	
3	56. Nonetheless, Nurse Vergara	Levine Decl., ¶ 17, Ex. BB (Vergara
4	reviewed the g-tube feeding procedures	Decl., ¶ 15, Ex. A (g-tube feeding
5	notebook, which contained generic District	procedures notebook)).
6	procedures, consents and treatment logs,	
7	with Mrs. Brenneise.	
8	57. In anticipation of T.B.'s enrollment	Levine Decl., ¶ 17, Ex. BB (Vergara
9	at Wangenheim, Nurse Linda Vergara	Decl., ¶¶ 6, 7).
10	attempted to meet with his parents to plan	Levine Decl., ¶ 11, Ex. L (October 31,
11	and finalize Individualized School	2007 email from Nurse Vergara to
12	Healthcare Plans for T.B. On October 31,	Mrs. Brenneise [PC&D001228-
13	2007, she sent an email to Mrs. Brenneise,	1229)).
14	requesting to meet with her at Wangenheim	
15	to pick up enrollment papers, review the	
16	health plan, and go over g-tube equipment	
17	and feeding procedures. Mrs. Brenneise	
18	indicated she was unavailable to come to	
19	school that day. Later that day, she spoke	
20	with Mrs. Brenneise by telephone.	
21	58. During Nurse Vergara and Mrs.	Levine Decl., ¶ 17, Ex. FF (Doctors
22	Brenneise's telephone conversation on	Decl., ¶ 27, Ex. BB (November 13,
23	October 31, 2007, Nurse Vergara	2007 email from S. Doctors to A.
24	confirmed that a nurse would be available	Brenneise [SDUSD 1154]).
25	for T.B. when he started school. Mrs.	Levine Decl., ¶ 17, Ex. DD (Glynn
26	Brenneise's notes from the conversation	Decl. ¶ 44, Ex. DD [November 1,
27	and her email to Nurse Vergara state this.	2007 letter from S. Sutherland to S.
28	Ms. Doctors and the District's counsel also	Wyner [SDUSD 371-74]).
	later confirmed this point in writing.	Levine Decl., ¶ 17, Ex. Y (Gorman
		Decl. ¶ 7).
		Levine Decl., ¶ 10, Ex. K (A.
		Brenneise's notes [PC&D 785] [A.
		Brenneise Deposition, Vol. I, Ex. 20]);
		¶ 11, Ex. L (emails between A.
		Brenneise and L. Vergara [PC&D
		1228-29]); ¶ 13, Ex. N (A. Brenneise
		Deposition, Vol. II, 323:11-324:10.).
	59. On November 5, 2007, T.B. and Mrs.	Levine Decl., ¶ 17, Ex. W (Bonnet
		Decl., ¶ 5).

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1 Brenneise demonstrated the g-tube feeding, 2 the feeding equipment, and the supplies to 3 Wangenheim nurse, Sara Bonnet, T.B.'s 4 case manager Sheila Doctors, Jennie 5 Wallace, the NPA behavioral supervisor, 6 and T.B.'s behavioral aide. A g-tube feeding daily schedule at Wangenheim was created.	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 55, Ex. KK (transition activities chart [SDUSD 2169-71])).
7 60. On November 9, 2007, the nurses 8 had a meeting in the parents' home 9 regarding T.B.'s school health needs and the IHSP.	Levine Decl., ¶ 17, Ex. W (Bonnet Decl., ¶ 6).
10 <b>District Indicates Its Readiness to Have T.B. Begin School.</b>	
11 61. At the November 29, 2007 IEP 12 meeting, Ms. Doctors indicated that the 13 District believed it was ready to have T.B. 14 begin school. It offered to cease the in- 15 home observations and move directly to 16 Phase I of the transition plan. However, 17 Mrs. Brenneise stated at the meeting that 18 "until the piece where Chris Vinceneux's involved occurs, I don't know that he starts school."	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 42, Ex. II (December 12, 2007 letter from S. Doctors to A. Brenneise [SDUSD 1236-38])).  Levine Decl., ¶ 17, Ex. AA (Howarth Decl., ¶ 7).  Levine Decl., ¶ 4, Ex. A (November 29, 2007 IEP meeting transcript [SDUSD 7033]),  Levine Decl., ¶ 17, Ex. EE (MarySue Glynn Suppl. Declaration in Support of District's Nov. 28, 2011 Motion for Summary Judgment ("Glynn Suppl. Decl." Ex. NN [SDUSD 870])).
19 62. On December 12, 2007, Ms. Doctors 20 notified Mrs. Brenneise that the District had 21 completed all the activities required prior to 22 T.B.'s starting school with the exception of 23 those involving Mr. Vinceneux and again 24 asked Mrs. Brenneise to start T.B. in school.	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 42, Ex. II (December 12, 2007 letter from S. Doctors to A. Brenneise [SDUSD 1236-38])).
25 63. Plaintiffs claim the District failed to 26 implement the Decision by failing to 27 provide a nurse to assist T.B. with g-tube 28 feedings at school because the nursing services offered by the District at the	SAC ¶ 48.  Levine Decl., ¶ 10, Ex. J (A. Brenneise Deposition, Vol. I, 184:5- 185:4, 258:20-259:25).

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1	November 2007 IEP meeting were not	
2	consistent with the ALJ's order.	
3	64. However, the District did implement	AR 1986-87 (Order ¶¶ 1-6).
4	the ALJ's Order, which modified the	
5	December 4, 2006 IEP, and was ready,	Facts 66-74 incorporated by reference.
6	willing and able to provide the nursing	
7	services called for in the Order, as set forth	
8	above.	
9	<b>The 2007-2008 IEP Offers</b>	
10	65. A November 29, 2007 IEP meeting	AR 5139.
11	was held to draft an IEP for the 2007-2008	Levine Decl., ¶ 17, Ex. FF (Doctors
12	school year. That IEP included the same	Decl., ¶ 36).
13	amount of nursing services as offered in the	Levine Decl., ¶ 17, Ex. EE (Glynn
14	December 4, 2006 IEP, but provided that	Suppl. Decl., Ex. NN (November 29,
15	the nurse would personally supervise g-tube	2007 IEP [SDUSD 877, 803-870,
16	feeding the first week of school, also	873]).
17	stating: "Following training by the school	Levine Decl., ¶ 17, Ex. BB (Vergara
18	nurse, BSA staff will replace the school	Decl., ¶ 9).
19	nurse as staff designated to be present and	Levine Decl., ¶ 17, Ex. CC (Linda
20	personally assist [T.B.] with G-tube	Vergara's Supplemental Declaration
21	feeding. School nurses will supervise	in Support of District's Nov. 28, 2011
22	BSAs, as well as train and supervise SEHT	Motion for Summary Judgment, ¶¶ 3-
23	and SET to be designated back-up staff in	6.
24	case of BSA absence or emergency." The	Levine Decl., ¶ 17, Ex. Y (Jennifer
25	school nurse would also, of course, be	Gorman's Supplemental Declaration
26	involved in attending T.B.'s IEP meetings,	in Support of District's Nov. 28, 2011
27	monitoring his medical supplies,	Motion for Summary Judgment, ¶¶ 3-
28	monitoring his progress on his goals, and	6.
	communicating with his doctors, his	
	mother, and the IEP team.	
	66. Phase I Daily Schedule of the new	Levine Decl., ¶ 17, Ex. FF (Doctors
	drafted transition plan stated "G-Tube	Decl., ¶ 16, Ex. K (Phase I Daily
	feeding in Nurse's office with Nurse	Schedule [SDUSD 1144]).
	assisting and BSA present at all times he is	
	in school." This document was provided to	
	Mrs. Brenneise by Ms. Doctors prior to the	
	November 29, 2007 meeting.	



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67. At the November 29, 2007 IEP meeting there was some discussion about whether Mrs. Brenneise would provide T.B.'s morning feeding and about the timing of his transportation to school.	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 45).  Levine Decl., ¶ 4, Ex. A (November 29, 2007 IEP meeting transcript [SDUSD 6977-79]).
68. During the meeting, the District also discussed designating a special education health technician or special education technician to assist T.B. with his g-tube feedings at school.	Levine Decl. ¶ 4, Ex. A (November 29, 2007 meeting transcript [SDUSD 6982, 7001-7004]).
69. Mrs. Brenneise did not raise any concerns at the November 29, 2007 IEP meeting about the nursing services offered or as to the identity of the person assisting T.B. with g-tube feeding.	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 44).  Levine Decl., ¶ 17, Ex. BB (Vergara Decl., ¶ 9).  Levine Decl., ¶ 4, Ex. A (November 29, 2007 IEP meeting transcript [SDUSD 6885-7036]).
70. On December 14, 2007, Mrs. Brenneise sent the District a letter stating that the November 29 IEP offer failed to provide a nurse to personally assist T.B. with his g-tube feedings.	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 48).  Levine Decl., ¶ 17, Ex. DD (Glynn Decl., ¶ 57, Ex. JJ (December 14, 2007 letter from A. Brenneise to M. Glynn [SDUSD 1239])).
71. The District convened a second IEP meeting on December 21, 2007 at which it increased the number of nursing hours offered to 12 per year in response to Mrs. Brenneise's concerns. The additional hours were to be used for ongoing training over the school year, where the nurse would "supervise designated personnel (BSA), monitor competencies, and provide consultation to designated personnel as needed."	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 46, 48, Ex. JJ (emails between S. Doctors and A. Brenneise indicating a nurse will be present at the December 21, 2007 IEP meeting [SDUSD 1241-43])).  Levine Decl., ¶ 17, Ex. EE (Glynn Suppl. Decl., ¶ 11, Ex. OO (December 21, 2007 IEP [SDUSD 807, 809-11, 805, 871])).
72. Nurse Linda Vergara attended the December 21, 2007 IEP meeting to answer any questions Mrs. Brenneise might have about the nursing services offered. Mrs.	Levine Decl., ¶ 17, Ex. FF (Doctors Decl., ¶ 48).  Levine Decl., ¶ 5, Ex. B (December 21, 2007 IEP meeting transcript [SDUSD 7038-40]).



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1 Brenneise did not ask the nurse any	Levine Decl., ¶ 17, Ex. BB (Vergara
2 questions about the offer.	Decl., ¶ 10).
3 73. At the December 21, 2007 IEP	Levine Decl., ¶ 17, Ex. FF (Doctors
4 meeting, Mrs. Brenneise refused to sign the	Decl., ¶ 49).
5 IEP, and stated, “If you want to know my	Levine Decl., ¶ 5, Ex. B (December
6 position on nursing, you can go back to our	21, 2007 IEP meeting transcript
7 closing argument, and if you have questions	[SDUSD 7040]).
8 about what’s in there – in the closing briefs	
9 – you can put your questions in writing to	
my attorney.”	
<b>The Parents Refused to Send T.B. to School</b>	
10 74. Throughout the IEP and	Levine Decl., ¶ 17, Ex. FF (Doctors
11 collaboration meetings in late 2007 and	Decl., ¶ 57).
12 early 2008, Mrs. Brenneise continued to	
13 express concerns about T.B. starting	
school.	
14 75. At the November 29, 2007 IEP	Levine Decl., ¶ 17, Ex. FF (Doctors
15 meeting, Mrs. Brenneise spoke at length	Decl., ¶ 39).
16 regarding her concerns about Wangenheim	Levine Decl., ¶ 10, Ex. J (A.
17 being in Program Improvement status based	Brenneise Deposition, Vol. I, 261:16-
18 on its test scores, and expressed her	262:6, 263:15-20); ¶ 4, Ex. A
19 feelings that T.B. should not attend	(November 29, 2007 IEP meeting
20 Wangenheim.	transcript, [SDUSD 7013-15, SDUSD
	7024-29].
	See also, Levine Decl., ¶ 9, Ex. I (C.
	Vinceneux Deposition, 115:5-12,
	173:16-174:1) (Mr. Vinceneux
	testified that Mrs. Brenneise expressed
	“ambivalence” about T.B. returning to
	a District school).
22 76. On February 22, 2008, Ms. Glynn	Levine Decl., ¶ 17, Ex. DD (Glynn
23 reiterated to Mrs. Brenneise that T.B. could	Decl., ¶ 59, Ex. KK (February 22,
24 start school immediately if she wanted to	2008 letter from M. Glynn to A.
send him.	Brenneise [PC&D 739]).
25 77. On Friday, February 29, 2008, the	Levine Decl., ¶ 17, Ex. FF (Doctors
26 District convened one last collaboration	Decl., ¶¶ 56-57, Ex. LL (agenda and
27 meeting to see if it could talk Mrs.	transition plan activities chart
Brenneise into having T.B. start school.	[SDUSD 1355-58]).

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1	This meeting lasted three hours. As of that	
2	date, transportation was set to begin on	
3	March 3, 2008.	
4	78. However, Mrs. Brenneise continued	Levine Decl., ¶ 17, Ex. FF (Doctors
5	to express concerns about T.B. starting	Decl., ¶ 57).
6	school and said that she would not send	Levine Decl., ¶ 17, Ex. AA (Howarth
7	T.B. to school.	Decl., ¶ 19).
8	79. In a letter dated February 29, 2008	Levine Decl., ¶ 17, Ex. FF (Doctors
9	Mrs. Brenneise notified the District that she	Decl., ¶ 58, Ex. MM (February 29,
10	was withdrawing T.B. from the District	2008 Letter from AB to S. Doctors
11	because the family was moving to	[SDUSD 2166]).
12	Minnetonka, Minnesota.	Levine Decl., ¶ 17, Ex. DD (Glynn
13		Decl., ¶ 60, Ex. LL (February 29, 2008
14		letter from A. Brenneise to M. Glynn
15		[SDUSD 2165]).
16	80. On March 7, 2008, T.B. disenrolled	Levine Decl., ¶ 6, Ex. D (Response of
17	from the District.	A. Brenneise to District's Request for
18		Admissions – Set One, No. 70; ¶ 7,
19		Ex. F (Response of R. Brenneise to
20		District's Request for Admissions –
21		Set One, No. 69); ¶ 8, Ex. H
22		(Response of T.B. to District's
23		Request for Admissions – Set One,
24		No. 54).
25	81. Following the OAH Decision, the	Levine Decl., ¶ 17, Ex. FF (Doctors
26	Brenneises never consented to or otherwise	Decl., ¶¶ 57, 61).
27	allowed T.B. to attend a District school.	Levine Decl., ¶ 6, Ex. D (Response of
28		A. Brenneise to District's Request for
		Admissions – Set One, No. 56); ¶ 8,
		Ex. H (Response of T.B. to District's
		Request for Admissions – Set One,
		No. 46).
	<b>Filings After OAH Decision</b>	
	82. The Brenneises filed another due	Levine Decl., ¶ 14, Ex. O (Nov. 6,
	process complaint with OAH on November	2007 Request for Due Process
	6, 2007 regarding the 2007 ESY offer, and	[P&CD003533-44]; and Ex. P (Nov.
	filed a California Department of Education	21, 2007 CDE compliance complaint
	compliance complaint on November 21,	[SDUSD 10165-10173]).
	2007 regarding the alleged failure to	
	provide a credentialed teacher in the home.	
	They asked OAH to review the ALJ's	
	Decision and make "an identical finding of	

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<p>a denial of FAPE” and award them compensatory education.</p>	
<p>83. Plaintiffs never filed on the 2007-08 offers. The District did file for due process on January 31, 2008 for a determination that its December 21, 2007 IEP offer was appropriate, but the Parents filed a motion to dismiss that complaint after T.B. moved out of state in March 2008.</p>	<p>Levine Decl., ¶ 15, Ex. Q (January 31, 2008 Request for Due Process [SDUSD 2137-40]; Ex. R (March 12, 2008 Motion to Dismiss [SDUSD 2060-72; Ex. S (March 18, 2008 OAH Order of Dismissal [SDUSD 2058-59].)</p> <p>Levine Decl., ¶ 17, Ex. DD (Glynn Decl., ¶ 62, Ex. MM (March 11, 2008 letter from S. Wyner to S. Sutherland regarding dismissal of 2007-2008 school year due process cases [SDUSD 321-23])).</p> <p>Levine Decl., ¶ 6, Ex. D (Response of A. Brenneise to District’s Request for Admissions – Set One, Nos. 52-55); ¶ 7, Ex. F (Response of R. Brenneise to District’s Request for Admissions – Set One, Nos. 51-54); ¶ 8, Ex. H (Response of T.B. to District’s Request for Admissions – Set One, Nos. 42-45).</p>
<p><b>Plaintiffs’ Allegations</b></p>	
<p>84. Plaintiffs allege in their Second Amended Complaint that “... the District failed and refused to comply with the OAH Decision, by, inter alia, ... (2) with respect to Student’s G-Tube feedings, failing and refusing to ensure the presence of a school nurse to personally assist with Student’s G-Tube feeding. As a result, Student was unable to obtain the same educational benefit as nonhandicapped students, was unable to attend public school without placing his health and safety as [sic] serious risk, unlike nonhandicapped persons who are able to attend public school without putting their health and safety at similar risk, and was unable to attend public school safely and be educated in the least</p>	<p>SAC, ¶48.</p>

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1 2 3 4 5 6 7 8	restrictive environment (i.e. a general education classroom in a public school) in the same manner as nonhandicapped children. The District thus failed to provide Student with a free appropriate public education that was designed to meet his individual needs as adequately as the needs of nonhandicapped persons are met, in violation of Section 504, 34 C.F.R. § 104.4, § 104.33(b)(1), and § 104.34(a); and, the ADA.”	
9 10 11 12 13 14 15 16 17 18	85. They allege that “[a]s a result of the District’s failure and refusal to comply with the OAH Decision, Student was ... excluded from attending public school due to the District’s failure to ensure that Student’s physical healthcare needs were met, causing Student to suffer injury including, but not limited to, educational injury, hedonic injury in that Student was deprived of the opportunity to engage in school activities and the opportunity to enjoy the society of other children of his age, and emotional distress.”	SAC, ¶50.
19 20 21 22 23 24 25 26 27	86. Further, they allege that “[a]s a result of the District’s violation of Student’s rights under Section 504 and the ADA, Parents suffered financial and other damages, including, but not limited to costs that Parents were forced to incur to educate Student in his home, lost wages for the time spent educating Student in his home rather than pursuing gainful employment, lost educational opportunities for Student’s mother and consequent diminution in her earning capacity, lost wages and costs incurred in connection with relocating	SAC, ¶51.

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1	Student and his family to Minnetonka, Minnesota, and emotional distress.	
2		
3	87. Plaintiffs allege in their Second Amended Complaint that they seek damages for, inter alia, lost wages for time spent educating T.B. in the home rather than pursuing gainful employment, and lost educational opportunities for Allison Brenneise and consequent diminution in her earning capacity. This allegation pertains to Plaintiffs' claim that Allison Brenneise was damaged because she had to educate T.B. in the home.	SAC, ¶ 51.  Levine Decl., ¶ 17, Ex. T (Mrs. Brenneise's Response to District's First Set of Interrogatories, Nos. 9-10; Exs. U and V, (Mrs. Brenneise's Amended and Second Amended Responses to District's First Set of Interrogatories, No. 9).
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11	88. In their request for due process regarding the 2006-2007 IEP offers, Plaintiffs claimed the District denied T.B. a FAPE because it failed to provide him with a credentialed teacher, thereby forcing his mother to act as his teacher and case manager. They therefore sought a salary to compensate her for her services.	AR 132-34, 136.
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17	89. In their prehearing conference statement, Plaintiffs requested that Mrs. Brenneise be compensated for the teaching services she provided to T.B. pursuant to the "Stay Put IEP", from August 2006 to the issuance of OAH's decision. In her decision following the hearing, the ALJ considered and denied the request, concluding that it was supported by neither the law nor the facts of the case.	AR 6246 (Prehearing Conference Statement).  TR 147:5-17, 157:15-162:3.  AR 1985-1986 (LC ¶¶ 64, 65).
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24	90. In their Second Amended Complaint, Plaintiffs also allege that the parents suffered lost wages and costs incurred in connection with relocating to Minnetonka, Minnesota. This allegation pertains to Plaintiffs' claim that they were forced to	SAC, ¶ 51.  Levine Decl., ¶ 17, Ex. T (Mrs. Brenneise's Response to District's First Set of Interrogatories, Nos. 9-10; Exs. U and V, (Mrs. Brenneise's Amended and Second Responses to District's First Set of Interrogatories.
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1 2	relocate to obtain an appropriate education for T.B..	No. 9).
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	91. Plaintiff Allison Brenneise claims to have suffered emotional distress arising from the denial of an appropriate education to T.B. She claims that she: “has suffered tension and stress as a result of having to witness T.B. being excluded from school by the District and thus being unable to obtain the various benefits school provides such as: social interactions and the opportunity to develop friendships with other children; educational benefit from receiving instruction from credentialed teachers; extra-curricular activities and opportunities to develop and explore potential interests, etc. ... She has suffered tension and stress as a result of the strain on her relationship with her husband, her family and her friends that having to spend so much time dealing with T.B.’s issues as a result of the District’s failure and refusal to provide him with a FAPE has caused ....”	Levine Decl., ¶ 17, Ex. V (Mrs. Brenneise’s Second Amended Response to District’s First Set of Interrogatories, Set One, No. 3).

DATED: September 26, 2016

DANNIS WOLIVER KELLEY

Bv: /s/ Amy R. Levine  
AMY R. LEVINE  
Attorneys for Defendant  
SAN DIEGO UNIFIED SCHOOL  
DISTRICT